

Sprint expressed concern that customers of tandem switching should not be required to cover overheads above that which is paid by customers using direct trunked transport. The Commission agrees that local transport restructure should treat equally efficient competitors neutrally, regardless of their size.

Elsewhere in this Order the Commission directs USWC to set its private line rates so that DS-1 and DS-3 mileage rates reflect the ratio of their underlying incremental costs. The Commission also is rejecting USWC's proposal to decrease voice-grade private line mileage rates. USWC's proposed rates for tandem switched transport, entrance facilities, and multiplexers appear reasonable and are not opposed by other parties. The Commission believes that, with that restructure, the rates for dedicated access service provide a reasonable basis for dedicated trunked transport access service.⁶²

6. Equal Access Charge

USWC proposes to eliminate its equal access charge and to recover the revenue in the RIC. AT&T argues that the equal access charge is not cost-based, has been eliminated from USWC's interstate tariff, and would be recovered from access charges in about one week of growth in revenues at the annual average rate of 10%. The Commission so finds, and concludes that there is no longer a need for an equal access charge.

⁶² Commission determined in the interconnection case that rates for dedicated access service and the dedicated transport component of switched access service did not have to be priced equally. Fourth Supplemental Order, UT-941464. Given the similarity in these services, however, it is desirable to price them on the same basis if conditions permit, and in this instance they do.

7. Zones

The Company proposes to establish zone pricing for the Carrier Common Line Charge, the RIC, and local switching in addition to local exchange service. It argues that the proposal reflects costs, but that cost differences are not essential to pricing differences, and competitive conditions have been recognized historically as appropriate factors in regulatory pricing.

Commission Staff and MCI contend that USWC did not show a cost difference between its urban and rural zones, but merely made a general assertion that costs of serving average customers are lower in urban areas. Staff argued that with switches being priced on a linear basis, there is no reason to believe that a cost basis exists to deaverage switching rates or the contribution elements of access. USWC did not attempt to make an argument that zone pricing was cost based but rather in response to competition. To sustain such an argument, USWC would need to show that its competitors can underprice its switching service in particular areas, and it has provided no evidence on that point.

The Commission rejects zone pricing for switched access charges, for the reasons stated in rejecting other applications of the Company's zone proposal. Neither cost differences nor competition differences justify this rate structure.

8. Revenue Impact

The rate structure approved by the Commission will result in an initial reduction of \$22.0 million in switched access charges paid by IXC's and a reduction of \$7.3 million in switched access charges paid by independent LEC's. The total ultimate revenue effect, including the reductions that will coincide with terminal loops phase-in, is a reduction of about \$39.3 million.

VII. Dedicated Services

A & B. Private Line/Terminal Loops, Analog/Digital

USWC proposes extensive revisions to its analog and digital private line service rates. The analog network access channel (NAC) rate would increase, channel performance and mileage rates would decrease, terminal loops and remote control office services would be grandfathered and eventually discontinued, non-recurring charges would be increased, and digital private line service would be restructured.

These proposals, along with changes proposed by Staff and TRACER, must be considered in context of USWC's overall dedicated service offering, as well as similar services that are provided under USWC's switched access and basic exchange tariffs. We will discuss each element of these proposed changes separately.

APPENDIX "B"

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2
3 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

4 U S WEST COMMUNICATIONS, INC.,

5
6 Petitioner,

7 v.

8 WASHINGTON UTILITIES AND
9 TRANSPORTATION COMMISSION,

10 Respondent.

CONSOLIDATED NOS.

96-2-09622-9 SEA
96-2-16286-0MEMORANDUM DECISION AND
ORDER ON DEPRECIATION CASE

11 Over the last two decades telecommunications companies and state and federal regulatory
12 agencies have struggled over the pivotal issue of depreciation and the related issue of setting
13 economic lives for plants and equipment. In the early 1980s this rule revolved around a Federal
14 Communications Commission (FCC) decision which allowed these companies to utilize the
15 Equal Life Group (ELG) depreciation methodology over the Vintage Group (VG) process. The
16 FCC determined that its policy decision preempted state regulators from making any decisions in
17 this area inconsistent with the FCC rule. The state agencies appealed this ruling. After five years
18 of having ELG forced on them by federal injunctions, the state agencies won relief from the FCC
19 rule when the United States Supreme Court declared the FCC lacked the statutory authority to
20 impose its will on individual state agencies. Louisiana Public Service Commission v. FCC, 476
21 U.S. 355 (1986). Many states, including Washington, immediately returned to utilizing VG
22 depreciation. Since this 1986 decision, US WEST has operated under two separate depreciation
23 methodologies: ELG as applied by the FCC for interstate rates and VG as mandated by the
24 WUTC for intrastate rates. On several occasions US WEST has petitioned the WUTC to adopt
25 ELG but consistently has been turned down. In this 1994 petition before the court the company
26 once again sought an accounting order authorizing it to change, for intrastate rate making
27

1 purposes, to an ELG methodology effective with 1982/83 vintages and also sought amortization
2 of a deficiency in its depreciation reserve account over five years and establishment of shorter
3 lives for 10 categories of plant.

4 At the request of US WEST, the matters at issue were submitted to the WUTC on the
5 basis of a "paper record." This meant that rather than having live expert witnesses subject to the
6 rigors of cross-examination and impeachment as to the basis or foundation for their expert
7 opinions, the Commission merely read the transcripts of the six expert witnesses, two on behalf
8 of US WEST, two for GTE and two for the WUTC. Essentially the WUTC had before it a
9 dispute among expert witnesses as to their relative opinions on the three main issues before the
10 Commission.

11 In its decisional order of May 26, 1995, the Commission for the first time did allow the
12 company to utilize ELG, but only on a going-forward basis. It granted US WEST's petition to
13 amortize the reserve deficiency over five years and denied the proposal to shorten plant lives. On
14 US WEST's first appeal, this court returned the case to the WUTC in February of 1996 for entry
15 of more specific findings to enable this court to adequately review the agency's decision as to
16 why ELG was not adopted on a retrospective basis to 1982/83 vintages and as to why the
17 Commission felt shorter plant lives were not justified by the evidence before the agency. The
18 WUTC issued its decision in its Fifth Supplemental Order on Remand issued April 11, 1996
19 which held to its previous decisions on the merits and gave specific reasons in support of these
20 decisions. This second appeal then followed.

21 The Superior Court's review of the agency action below is circumscribed by the state
22 Administrative Procedure Act (APA). This court does not enter detailed findings of facts and
23 conclusions of law. It is operating as an appellate court determining whether or not error
24 occurred at the administrative level either as to findings of fact or interpretations of law. If this
25 matter is appealed to the Court of Appeals or Supreme Court, the appellate court will conduct a
26 de novo review of the Commission's final decision on "the administrative record, not the
27 Superior Court findings and conclusions." Valentine, 77 Wn.App. At 844. This is a

1 "deferential" review standard where the court is prohibited from substituting its judgment for that
2 of the agency.

3 As to interpretations of law, this court usually gives heightened deference to an agency's
4 interpretation of a statute within in the agency's unique field of expertise or where the agency is
5 charged with the responsibility of administering the statute at issue. Pasco v. PERC, 119 Wn.2d
6 504 (1993). However, the final determination of what a law means ultimately is a question for a
7 court of law. Electric Lightwave, Inc. v. WUTC, 123 Wn.2d 530, (1994).

8 The main statute touching on depreciation for all regulated utilities is RCW 80.04.350
9 which grants the WUTC "the power . . . to . . . ascertain and by order fix the proper and adequate
10 rates of depreciation or retirement of the several classes of property of each public service
11 company." US WEST takes the position that the ELG method is undoubtedly the "proper and
12 adequate" method which most accurately and fairly sets the depreciation necessary to allow the
13 company an adequate rate to ensure the fair return it is guaranteed under the regulatory compact
14 and the state and federal constitutions. The WUTC takes the position that there is not any one
15 "right" answer to the question of what are "proper and adequate rates" and that its decision to
16 adopt ELG only on a going-forward basis strikes the proper balance between the needs of the
17 company and its investors and the consumers who pay the rates established by the Commission.

18 In the 1986 FCC case, the United States Supreme Court noted that the FCC and the
19 telecommunications companies were concerned that the coming revolution in
20 telecommunications occasioned by the federal policy of increasing competition would be
21 thwarted by state regulatory agencies who refuse to permit telephone companies to employ
22 "accurate accounting methods designed to reflect, in part, the effects of competition." Louisiana
23 Public Service Commission, 476 U.S. at 358. The Supreme Court discussed the benefits of ELG
24 over VG but refused to accept the alternative argument of the FCC that even if Congress did not
25 intend to preempt state action inconsistent with the FCC's decision to utilize ELG, the need for a
26 uniform national policy in this area should lead the court to find use of ELG by all regulatory
27 agencies was necessary to implement the federal telecommunications law.

1 US WEST would have this court interpret the state depreciation statute to require the
2 WUTC to make its decision on ELG vs. VG strictly on the basis of which depreciation method is
3 technically the best from an economics/accounting perspective. Therefore, US WEST asserts
4 that the most "accurate accounting method" must be the "proper and adequate rate of
5 depreciation" the legislature envisioned in RCW 80.04.350. The Commission, on the other hand,
6 asserts in its Fifth Supplemental Order that this statute grants broad discretion to the WUTC to
7 consider several factors, including what impact its decision will have on ratepayers, how
8 accurately estimates of equipment and plant lives can be made, and what historically has been
9 allowed or disallowed through the recent past.

10 This court does not perceive any reason to suggest the legislature intended a narrow
11 interpretation of the statutory duty delegated to the Commission in RCW 80.04.350. In fact, this
12 statute specifically authorizes the Commission to "consider the rate and amount theretofore
13 charged by the company for depreciation or retirement." See also Louisiana Public Service
14 Commission, 476 U.S. at 376, which recognizes that the state regulators appropriately make
15 depreciation choices "partially on the basis of fact and partially on the basis of such factors as the
16 perceived need to improve the industry's cash flow, spur investment, subsidize one class of
17 customer, or any other policy factor."

18 This court finds that the WUTC's interpretation of RCW 80.04.350 as a grant of "broad
19 discretionary authority to prescribe depreciation rates and methodologies" is a reasonable one,
20 particularly in light of the heightened degree of deference this court gives to the Commission's
21 interpretation of a statute clearly within the agency's field of expertise. Inland Empire Dist.
22 System v. WUTC, 112 Wn.2d 278, 282 (1989).

23 Within this statutory framework, the Commission made several findings of fact in support
24 of its decision to implement ELG on a going-forward basis. See Findings of Fact 7-17. In
25 addition, the Commission discussed other pertinent reasons in support of its decision at pages 11-
26 16 of its Order. In summary these reasons were:

27 --That the FCC implemented ELG on a going-forward basis.

- 1 --That many states do not allow ELG.
- 2 --That the total amount of depreciation taken over the life of an asset is the same under
- 3 VG as under ELG for any given vintage.
- 4 --That US WEST consistently has obtained full and timely capital recovery in this state.
- 5 --That either VG or ELG, when combined with remaining life depreciation, will ensure
- 6 the company has an opportunity to recover its investments.
- 7 --That allowing application of ELG to all vintages post 1982/83 will create
- 8 intergenerational inequity.

9 The court has reviewed the testimony of the various witnesses and determined that these

10 challenged findings of fact are amply supported by the record in the testimony of witnesses King

11 and Spinks and must be upheld under the deferential substantial review standard. In addition,

12 there is no indication the WUTC acted in an arbitrary or capricious manner. While US

13 WEST remains strongly convinced that its expert witnesses were much more credible, it is not the

14 reviewing court's task to weigh credibility but rather to ensure that the agency's decision was

15 reached "honestly and upon due consideration of the facts and circumstances." Northern Pacific

16 Trans. Co. v. WUTC, 69 Wn.2d 472, 478 (1966). "Where there is room for two opinions, action

17 is not arbitrary and capricious even though one may believe an erroneous conclusion has been

18 reached." Pierce County Sheriff v. Civil Service Commission, 98 Wn.2d 690, 695 (1983).

19 Likewise the WUTC gave sufficient reasons amply supported by evidence in the record to

20 support its decision that depreciation lives should not be shortened in this petition. The

21 testimony of witnesses Spinks and King that the Fisher-Pry model did not produce reliable

22 economic lives was accepted by the Commission over the company experts who strongly

23 disagreed with this position. While the Commission accepted as true the proposition that

24 economic lives are becoming shorter in the merging era of competition, it weighed the evidence

25 and sided with those witnesses who asserted the existing lives did adequately address the

26 company's need to be competitive with entities that are now and may soon be competing with US

27 WEST for provision of local telephone service. No violation occurred in the Commission's

28 MEMORANDUM DECISION AND ORDER ON DEPRECIATION CASE - 5

1 decision-making process on this issue. Reasonable minds could differ in making these kinds of
2 projections about how competition will evolve, how the new federal Telecommunications Act
3 will impact the landscape and how technological changes will impact the setting of lives.

4 The court is not persuaded that these policy decisions made by the Commission constitute
5 a confiscation of US WEST's property and run afoul of the United States or Washington
6 constitutions. At this point it is mere speculation to assert that US WEST will be denied an
7 opportunity to recover the expenses and return of capital it is entitled to under the WUTC's
8 decisional order. Under controlling U.S. Supreme Court authority US WEST's constitutional
9 challenges must fail. Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944)
10 and Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989).

11 For these reasons it is hereby ORDERED, ADJUDGED AND DECREED that the
12 decision of the Washington Utilities and Transportation Commission in this matter is
13 AFFIRMED.

14 DATED this 25th day of November, 1996.

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17 Roberts S. Lasnik, Judge
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Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 96-488

In the Matter of)
)
Access Charge Refrom)
)
)

CERTIFICATE OF SERVICE


I Certify under penalty or perjury under the laws of the State of Washington that on January 28, 1997, I served true and correct copies of Comments of Washington Utilities and Transportation Commission and this Certificate of Service on the following persons as set forth below via Federal Express Overnight Mail:

OFFICE OF THE SECRETARY
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Dated and signed at Olympia, Washington, on January 28, 1997.


KIPPI WALKER